

## Internal Revenue Service

Number: **201004001**

Release Date: 1/29/2010

Index Number: 355.01-01, 355.10-00

## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-103888-09

Date:

October 22, 2009

### Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

DRE 10 =

DRE 11 =

DRE 3 Sub 1 =  
Holding Companies

LLC =

Company =

Holdings =

Holdings  
Sub 1 =

Holdings  
Sub 2 =

Group 1 =

PLR-103888-09

4

Group 2 =

Group 3 =

Group 4 =

Distributing =

Business

Controlled =

Business

Series A =

Group 1 Stock

Series A =  
Group 2 Stock

Series A =

Group 3 Stock

Series A =  
Group 4 Stock

Series B =

Group 1 Stock

Series B =  
Group 2 Stock

Series B =

Group 3 Stock

Series B  
Group 4 Stock =

Distributing =

Group 1 Stock

Distributing =

Group 2 Stock

Distributing =

Group 3 Stock

Controlled =

Series A  
Common Stock

Controlled =

Series B  
Common Stock

Holdings =

Class A  
Common Stock

Holdings =

Class B  
Common Stock

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Distributing =

Credit Facility

Company =

Credit Facility

Shareholder =

Related  
Shareholders =

Successor  
Shareholder =

Related Persons =

Distributing Group 1 =

Public Shareholders

Exchange Ratio =

Sub 3 Company =

Shares

Transition Period =

Sub 2 Distribution =

State A =

Dear :

This letter responds to your January 16, 2009 request for rulings on certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Split-off (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing is a holding company and the common parent of an affiliated group that files a consolidated federal income tax return. Distributing has outstanding a series of publicly traded common stock.

Distributing, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Distributing SAG”), conducts various businesses, including through Sub 1, the Distributing Business, and through Sub 2 and Sub 4 (and their ownership of LLC), the Controlled Business. Each of Sub 1, Sub 2, and Sub 4 is a member of the Distributing SAG.

Distributing wholly owns DRE 1, which wholly owns Controlled, DRE 2, DRE 6, DRE 7, DRE 8 and Sub 4. DRE 2 wholly owns DRE 3. DRE 3 wholly owns DRE 4, Sub 2, and the DRE 3 Sub 1 Holding Companies (the DRE 3 Sub 1 Holding Companies together with DRE 7, the “Sub 1 Holding Companies”). The Sub 1 Holding Companies, in the aggregate, wholly own Sub 1. The Distributing SAG owns at least a 33 1/3-percent interest in LLC. LLC wholly owns DRE 10. DRE 8 wholly owns Sub 3, which wholly owns DRE 9 and owns, directly and through DRE 9, approximately b percent of the outstanding stock of Company. Company wholly owns Holdings. Holdings wholly owns Holdings Sub 1 and Holdings Sub 2. Each of Holdings, Holdings Sub 1, and Holdings Sub 2 was newly created in connection with the Combination (as described below) and has conducted no activities other than in connection with the Combination, including entering into certain agreements related thereto. Each of DRE 1, DRE 2, DRE 3, DRE 4, DRE 6, DRE 8, DRE 9, DRE 10, and the Sub 1 Holding Companies is classified as an entity disregarded as separate from its owner for federal tax purposes under § 301.7701-3.



Controlled was recently formed by DRE 1 in order to effect the Split-off and has outstanding a single class of common stock. Following the Split-off, Controlled, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled SAG”), and the Controlled SAG’s ownership interest in LLC, will conduct the Controlled Business and the Distributing SAG will continue the conduct of the Distributing Business.

On Date 1, Distributing effected a reclassification of its outstanding common stock (the “Reclassification”). In the Reclassification, (i) each share of existing Series A Group 2 Stock was exchanged for  $\frac{c}{d}$  reclassified share of Series A Group 2 Stock and  $\frac{d}{d}$  shares of Series A Group 1 Stock, (ii) each share of its existing Series B Group 2 Stock was exchanged for  $\frac{c}{d}$  reclassified share of Series B Group 2 Stock and  $\frac{d}{d}$  shares of Series B Group 1 Stock, and (iii) each share of its Series A Group 3 Stock and Series B Group 3 Stock was modified in certain respects. Distributing has represented that the Reclassification qualified as a recapitalization under § 368(a)(1)(E). As a result of the Reclassification, any Distributing shareholder who held a greater percentage of the voting power attributable to pre-Reclassification Distributing Group 3 Stock than of the voting power attributable to pre-Reclassification Distributing Group 2 Stock experienced a reduction in its aggregate voting power in Distributing due to the additional number of shares of Distributing stock issued with respect to each pre-Reclassification share of Distributing Group 2 Stock.

On Date 2, Distributing, Controlled, Company, and Holdings, among others, entered into an agreement (as amended, the “Merger Agreement”) which, together with certain related agreements, provide for a series of transactions to effect the Combination. Pursuant to the Combination, if effected, Holdings will become the new public parent company of Controlled and the Company following the Split-off. The Split-off will occur immediately prior to the Combination, unless the Merger Agreement is terminated, in which case the Split-off will be completed as soon as practical after all conditions to the Split-off have been satisfied or waived (other than those related to the Combination).

Financial information has been received indicating that each of the Distributing Business and the Controlled Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The board of directors of Distributing has determined that the Split-off will serve the following corporate business purposes: (i) to increase the value of Controlled’s stock so that Controlled’s stock may be used more efficiently and effectively for acquisition purposes, to raise capital, and to compensate officers and employees, and (ii) to facilitate a combination of Controlled and the Company (collectively, the “Corporate Business Purposes”).

### **Proposed Transaction**

Distributing has proposed, and partially undertaken, the following series of related transactions (the “Proposed Transaction”):

- (i) On Date 2, Distributing and Sub 3 entered into the Distributing Credit Facility, and Company and Sub 3 entered into the Company Credit Facility.
- (ii) DRE 4 will form DRE 5 and will contribute thereto all of its assets and liabilities, other than any assets and liabilities related to LLC.
- (iii) DRE 4 will distribute its entire interest in DRE 5 to DRE 3.
- (iv) DRE 3 will distribute its entire interest in each of Sub 2 and DRE 4 to DRE 2.
- (v) DRE 2 will distribute its entire interest in each of Sub 2 and DRE 4 to DRE 1.
- (vi) DRE 8 will distribute its entire interest in Sub 3 to DRE 1.
- (vii) Distributing will cause the full amount of any intercompany receivables due to Distributing (or any of its disregarded entities) from Sub 4 and Sub 3 to be contributed to the capital of Sub 4 and Sub 3, respectively.
- (viii) DRE 1 will contribute its entire interest in Sub 2 to Controlled, and immediately thereafter, Sub 2 will convert under State A law to a limited liability company known as DRE 11, that is disregarded as separate from its owner under § 301.7701-3 (the “Restructuring”). DRE 1 will constructively receive Controlled stock in exchange for all of its Sub 2 stock.
- (ix) DRE 1 will contribute its entire interest in each of Sub 4, DRE 6, Sub 3, and DRE 4, cash and the full amount of any intercompany receivable due to Distributing from DRE 11 (collectively, the “Contributed Assets”) to Controlled, and Controlled will assume certain liabilities related to the Contributed Assets, LLC, and DRE 10, as well as Employee Rights (as defined below) (collectively, the “Contribution”). Controlled will execute an assumption and joinder agreement, whereby Controlled will agree to guarantee certain contractual obligations related to LLC and DRE 10.
- (x) Controlled will contribute its entire interest in DRE 11 and Sub 4 to DRE 4.
- (xi) Controlled will file an amended and restated certificate of incorporation, pursuant to which Controlled’s outstanding common stock will be

recapitalized as Controlled Series A Common Stock (entitled to c vote per share) and Controlled Series B Common Stock (entitled to e votes per share) (collectively, the “Controlled Common Stock”).

- (xii) DRE 1 will distribute all of the outstanding stock of Controlled to Distributing.
- (xiii) Controlled will issue a sufficient number of shares of Controlled Series A Common Stock and Controlled Series B Common Stock to Distributing to effect the Split-off.
- (xiv) Distributing will distribute (i) all of the outstanding Controlled Series A Common Stock to the holders of Series A Group 1 Stock in exchange for a pro rata portion of their Series A Group 1 Stock, and (ii) all of the outstanding Controlled Series B Common Stock to the holders of Series B Group 1 Stock in exchange for a pro rata portion of their Series B Group 1 Stock (together, (i) and (ii), the “Split-off”). Distributing will distribute cash in lieu of issuing fractional shares to any shareholder that would otherwise be entitled to receive a fractional share of Controlled Common Stock or that would otherwise hold a fractional share of Distributing Group 1 Stock as a result of the Split-off.
- (xv) Subject to the approval of its shareholders, Distributing expects to amend and restate its charter immediately following the Split-off in order to (i) rename Group 1 as Group 4, the Series A Group 1 Stock as the Series A Group 4 Stock, and the Series B Group 1 Stock as the Series B Group 4 Stock, (ii) update the definition of Group 4 to reflect the composition of that group after giving effect to the Split-off, and (iii) update the definitions of Group 2 and Group 3 to give effect to the change in the attribution of businesses to each of these groups since the effective date of the current charter (the “Redesignation”).
- (xvi) Following the Split-off, subject to the approval of its shareholders, Distributing may effect a reverse stock split of (i) the Series A Group 2 Stock at a ratio of c for f, (ii) the Series B Group 2 Stock at a ratio of c for f, (iii) the Series A Group 3 Stock at a ratio of c for g, and (iv) the Series B Group 3 Stock at a ratio of c for g (collectively, the “Reverse Split”).

Subject to the satisfaction of certain conditions set forth in the Merger Agreement, the following steps (xvii) through (xix) (collectively, the “Combination”) will occur pursuant to a single integrated plan:

- (xvii) Related Shareholders (or their permitted transferees) will contribute each share of Controlled Series B Common Stock owned by them to Holdings

in exchange for an amount of shares of Holdings Class B Common Stock (entitled to h votes per share) equal to the Exchange Ratio.

- (xviii) Holdings Sub 1 will be merged with and into the Company, with the Company surviving (the “Company Merger”), and each outstanding share of Company common stock (other than the Sub 3 Company Shares) will be converted into c share of Holdings Class A Common Stock (entitled to c vote per share). Any shares of Company common stock held by the Company will be cancelled, and the Sub 3 Company Shares will remain outstanding as shares of Company common stock. The shares of Holdings Sub 1 stock will be converted, in the aggregate, into the number of shares of common stock of the Company surviving corporation that are equal to the number of shares of Company common stock that are outstanding immediately prior to the Company Merger, excluding the Sub 3 Company Shares (that will remain outstanding as Company common stock) and any Company shares held by the Company (that will be cancelled).
- (xix) Holdings Sub 2 will be merged with and into Controlled, with Controlled surviving (the “Controlled Merger”), and each outstanding share of Controlled Series A Common Stock and Controlled Series B Common Stock (other than the shares of Controlled Common Stock held by Controlled and Holdings (after taking into account the transfer in step (xvii)), which will be cancelled) will be converted into an amount of shares of Holdings Class A Common Stock equal to the Exchange Ratio. Each share of Holdings Sub 2 stock will be converted into one share of stock of the Controlled surviving corporation.

Cash will be issued instead of fractional shares of Holdings stock in the Combination.

Solely as a result of the Split-off, holders of Distributing Group 2 Stock and Distributing Group 3 Stock may experience an increase in their ownership percentage (by vote and value) of Distributing stock. This will depend upon such holders’ ownership of Distributing Group 1 Stock.

In connection with the Split-off, Distributing and Controlled will enter into agreements to provide for (x) certain transition services and related transition arrangements (the “Transition Services”) during the Transition Period (the “Services Agreement”) and (y) the allocation and sharing of tax liabilities and related obligations. Distributing and Controlled will also enter into a reorganization agreement to provide for the principal corporate transactions required to effect the Split-off and related restructuring transactions (together with the agreements above, the “Transition Agreements”). The Transition Agreements will include certain indemnification provisions that may require Distributing and Controlled to make indemnity payments to

each other following the Split-off (any such payments, “Indemnity Payments”). Also, at the time of the Split-off, and provided that the Merger Agreement has not been earlier terminated, Sub 3 will borrow funds under the Company Credit Facility and will repay any outstanding principal and interest under the Distributing Credit Facility.

As a result of the Split-off, each of the compensatory stock options, restricted shares of stock, and stock appreciation rights (together, the “Employee Rights”) with respect to Series A Group 1 Stock or Series B Group 1 Stock that are outstanding at the time of the Split-off will be converted into two Employee Rights (such conversions, the “Employee Rights Conversions”).

Under the Holdings Charter, the initial Holdings board of directors will have one class of directors serving a term that expires at the first annual meeting of Holdings’ shareholders (which meeting shall occur during the first full calendar year following the year in which the Combination occurs). At the first annual meeting, the Holdings board of directors will be divided into three classes serving staggered three-year terms. The Merger Agreement, as amended, provides that the initial Holdings board of directors at the time of the Combination will be composed of (1) f individuals that serve on the Controlled board of directors immediately prior to the time of the Combination (provided that if one of such individuals does not qualify as an independent director of Holdings for Nasdaq purposes, Controlled shall designate a replacement director that is reasonably acceptable to Holdings), (2) i individuals that serve on the Company board of directors immediately prior to the Combination as designated by the Company board of directors, and (3) c additional independent director whose appointment to the Company board of directors prior to the Combination was approved by a supermajority vote of the Company board of directors (or if no such director was appointed to the Company board of directors prior to the Combination, then an additional independent director may be appointed to the Holdings board of directors following the Combination by a supermajority vote of the Holdings board of directors).

Following the completion of the Combination, Holdings will have the right to redeem Holdings Class B Common Stock, except with respect to stock held by certain transferees, upon the death of Shareholder (the “Redemption Right”). In addition, the Holdings Class B Common Stock (entitled to h votes per share) will automatically convert into Holdings Class A Common Stock (entitled to c vote per share) upon certain transfers described in the Holdings charter to a person that is not an affiliate of the transferor (an “Automatic Conversion”). It is expected that upon any Automatic Conversion, the Distributing Group 1 Public Shareholders will experience a relative increase in their voting power in Holdings. In connection with the Combination, Related Shareholders also granted Holdings a right of first refusal (the “ROFR”) to purchase shares of their Holdings Class B Common Stock in the event of certain proposed transfers of such stock.

It is contemplated that the Holdings board of directors may authorize open market repurchases of Holdings Class A Common Stock (the “Holdings Post-Merger Repurchases”) following the completion of the Combination, based on prevailing market conditions, available cash, and other relevant business considerations.

### **Representations**

The following representations are made with respect to the Restructuring:

(a) The fair market value of the Controlled stock received by the Sub 2 shareholder will be approximately equal to the fair market value of the Sub 2 stock surrendered in exchange therefor.

(b) Immediately following consummation of the Restructuring, the Sub 2 shareholder will own all of the outstanding Controlled stock and will own such stock solely by reason of its ownership of Sub 2 stock immediately prior to the Restructuring.

(c) Immediately following consummation of the Restructuring and prior to the Contribution, Controlled will possess indirectly through DRE 11 the same assets and liabilities as those possessed by Sub 2 immediately prior to the Restructuring (other than any cash used to pay Restructuring expenses and a nominal amount of assets held by Controlled to facilitate its organization).

(d) Controlled has no plan or intention to issue additional shares of its stock following the Restructuring, except in connection with the Proposed Transaction, to satisfy Employee Rights or as contemplated by the Corporate Business Purposes.

(e) Except for the Sub 2 Distribution, assets distributed to shareholders, assets used to pay expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 2 immediately preceding the Restructuring will, in the aggregate, constitute less than one percent of the net assets of Sub 2. There will be no dissenting shareholders.

(f) At the time of the Restructuring, Sub 2 will not have outstanding any warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock in Sub 2.

(g) Except in connection with the Proposed Transaction, there is no plan or intention for Controlled to reacquire any of the Controlled stock issued in the Restructuring.

(h) The liabilities of Sub 2 treated as assumed (within the meaning of § 357(d)) by Controlled plus the liabilities, if any, to which the transferred assets are

subject were incurred by Sub 2 in the ordinary course of its business and are associated with the assets transferred.

(i) The Sub 2 shareholder will pay its respective expenses, if any, incurred in connection with the Restructuring.

(j) Sub 2 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

The following representations are made with respect to the Contribution and the Split-off:

(k) Any indebtedness owed by Controlled to Distributing after the Split-off will not constitute stock or securities.

(l) The fair market value of the Controlled Common Stock and cash in lieu of fractional shares to be received by each holder of Distributing Group 1 Stock in the Split-off will be approximately equal to the fair market value of the Distributing Group 1 Stock to be surrendered by such holder in the Split-off.

(m) No part of the consideration to be distributed by Distributing in the Split-off will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except as contemplated by the Employee Rights Conversions.

(n) Distributing and Controlled will treat all members of their respective separate affiliated groups as defined in § 355(b)(3)(B) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(o) The five years of financial information submitted on behalf of the Distributing Business (as conducted by the Distributing SAG) is representative of the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(p) The five years of financial information submitted on behalf of the Controlled Business (as conducted by LLC) is representative of the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.

(q) The Distributing SAG neither acquired the Distributing Business nor acquired control of an entity conducting the Distributing Business during the five-year period ending on the date of the Split-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year

period ending on the date of the Split-off, the Distributing SAG has been the principal owner of the goodwill and significant assets of the Distributing Business and will continue to be the principal owner following the Split-off.

(r) The Distributing SAG neither acquired the Controlled Business conducted by LLC nor acquired control of an entity conducting the Controlled Business (through LLC) during the five-year period ending on the date of the Split-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by § 1.355-3(b)(3)(ii), of the Controlled Business. Throughout the five-year period ending on the date of the Split-off, LLC has been the principal owner of the goodwill and significant assets of the Controlled Business and LLC will continue to be the principal owner following the Split-off.

(s) Following the Split-off, the Distributing SAG will continue the active conduct of the Distributing Business, and the Controlled SAG (through LLC) will continue the active conduct of the Controlled Business, independently (except as contemplated by the Services Agreement) and with its separate employees (or, with respect to the Controlled Business, the LLC's employees).

(t) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of any liabilities assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(u) Any liabilities assumed (within the meaning of § 357(d)) in the Contribution and any liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(v) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution exceeds the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange, and (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(w) No intercorporate debt will exist between Distributing (and its consolidated subsidiaries) and Controlled (and its consolidated subsidiaries) at the time of, or subsequent to, the Split-off, except for the Distributing Credit Facility, payables arising under the Transition Agreements or indebtedness otherwise arising in the ordinary course of business.

(x) Immediately before the Split-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany



transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Furthermore, Distributing's excess loss account, if any, with respect to its Controlled stock will be included in income immediately before the Split-off to the extent required by applicable regulations (see § 1.1502-19).

(y) Except for payments made for Transition Services during the Transition Period or for Indemnity Payments, payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(z) No party to the Contribution and Split-off is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(aa) The Split-off is being carried out for the Corporate Business Purposes. The Split-off is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.

(bb) The Split-off is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(cc) For purposes of § 355(d), immediately after the Split-off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split-off.

(dd) For purposes of § 355(d), immediately after the Split-off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split-off or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split-off.

(ee) Provided the IRS rules as requested in rulings (22) through (28), inclusive, the Split-off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(ff) The shares of Distributing stock that were exchanged in the Reclassification had a fair market value equal to the fair market value of the shares of Distributing stock that were received in exchange therefor.

(gg) The voting power (and value) associated with the Controlled stock to be distributed to the holders of Distributing Group 1 Stock is not calculated by reference to any increase or decrease to the aggregate voting power percentage in Distributing of any such shareholder that resulted from the Reclassification.

(hh) The Redemption Right to be contained in the Holdings charter does not have a principal purpose of avoiding the application of § 355(e) or § 1.355-7.

(ii) The ROFR has customary terms and does not have a principal purpose of avoiding the application of § 355(e) or § 1.355-7.

(jj) Immediately after the Split-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Split-off, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(kk) Except as provided in the Merger Agreement, Distributing, Controlled and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Contribution and the Split-off.

(ll) The payment of cash in lieu of fractional shares of Controlled Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and does not represent separately bargained for consideration. The total cash that will be paid in the Split-off to any Distributing shareholder instead of issuing fractional shares of Controlled Common Stock will not exceed one percent of the total consideration that will be distributed in the Split-off. Any fractional share interests of each Distributing shareholder will be aggregated with respect to each series of Controlled Common Stock, and it is intended that no Distributing shareholder will receive cash in lieu of fractional shares of Controlled Common Stock in an amount equal to or greater than the value of one full share of each series of Controlled Common Stock.

(mm) The payment of cash in lieu of fractional shares of Distributing Group 1 Stock is solely for the purpose of avoiding the expense and inconvenience to Distributing of maintaining fractional shares and does not represent separately bargained for consideration. The total cash that will be paid in the Split-off to any Distributing shareholder in exchange for fractional shares of Distributing Group 1 Stock will not exceed one percent of the total consideration that will be distributed in the Split-

off. Any fractional share interests of each Distributing shareholder will be aggregated with respect to each series of Distributing Group 1 Stock, and it is intended that no Distributing shareholder will receive cash in lieu of fractional shares of Distributing Group 1 Stock in an amount equal to or greater than the value of one full share of each series of Distributing Group 1 Stock.

(nn) Each of the a series of outstanding Distributing stock constitutes stock of Distributing for federal income tax purposes.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows on the Restructuring:

(1) The Restructuring will qualify as a reorganization within the meaning of § 368(a)(1)(F). Sub 2 and Controlled will each be “a party to the reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by the Sub 2 shareholder on the exchange of Sub 2 stock for Controlled stock in the Restructuring (§ 354(a)).

(3) No gain or loss will be recognized by Sub 2 in the Restructuring (§§ 361(a) and (c) and 357(a)).

(4) Controlled will not recognize any gain or loss on the Restructuring (§ 1032(a)).

(5) Controlled’s basis in each asset received from Sub 2 in the Restructuring will equal the basis of such asset in the hands of Sub 2 immediately before the Restructuring (§ 362(b)).

(6) Controlled’s holding period in each asset received from Sub 2 in the Restructuring will include the holding period during which Sub 2 held such asset (§ 1223(2)).

(7) The aggregate basis of the Controlled stock received by the Sub 2 shareholder in the Restructuring will be the same as the shareholder’s aggregate basis in the Sub 2 stock surrendered in exchange therefor (§ 358(a)(1) and §§ 1.358-1(a) and 2(a)(2)).

(8) The holding period of the Controlled stock received by the Sub 2 shareholder will include the holding period of the Sub 2 stock surrendered in exchange therefor, provided that the shares of Sub 2 stock are held as a capital asset by such holder on the date of the Restructuring (§ 1223(1)).

(9) The taxable year of Sub 2 does not close on the date of the Restructuring, and such tax year continues in the name of Controlled (§ 1.381(b)-1 and Rev. Rul. 57-276, 1957-1 C.B. 126).

Based solely on the information submitted and the representations made, we rule as follows on the Contribution and the Split-off:

(10) The Contribution and the Split-off, together, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

(11) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(12) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(13) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(14) Controlled’s holding period in each asset received from Distributing in the Contribution will include the holding period during which Distributing held such asset (§ 1223(2)).

(15) No gain or loss will be recognized by Distributing on the Split-off (§ 361(c)).

(16) The holders of Distributing Group 1 Stock will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled stock in the Split-off in exchange for shares of Distributing Group 1 Stock (§ 355(a)(1)).

(17) The aggregate basis of the Controlled stock received by each holder of Distributing Group 1 Stock in the Split-off (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will be the same as the shareholder’s aggregate basis in the Distributing Group 1 Stock surrendered in exchange therefor (§ 358(a)(1) and §§ 1.358-1(a) and 2(a)(2)).

(18) The holding period of the Controlled stock received by each holder of Distributing Group 1 Stock in the Split-off (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period of the Distributing Group 1 Stock surrendered in exchange therefor, provided the

shares of Distributing Group 1 Stock are held as a capital asset by such holder on the date of the Split-off (§ 1223(1)).

(19) A shareholder who receives cash in lieu of fractional shares of Controlled Common Stock and/or Distributing Group 1 Stock will recognize gain or loss measured by the difference between the basis of such fractional share interest and the amount of cash received therefor (§ 302(a)). Provided the fractional share interest is a capital asset in the hands of the shareholder on the date of the Split-off, any gain or loss will be capital gain or loss (§§ 1221 and 1222).

(20) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10 and 1.1502-33.

(21) Except for purposes of § 355(g), any Indemnity Payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Split-off or for a taxable period beginning on or before and ending after the Split-off and (ii) will not have become fixed and ascertainable until after the Split-off will be treated as occurring immediately before the Split-off (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Rev. Rul. 83-73, 1983-1 C.B. 84).

(22) The Reclassification will not cause any part of the Controlled stock acquired in the Split-off to fail to qualify under § 355(e)(3)(A)(ii).

(23) Any increase in ownership of Distributing stock, by vote or value, by a Distributing shareholder which occurs solely as a result of the Split-off will not be an acquisition that is taken into account for purposes of § 355(e)(2)(A)(ii) (except to the extent that the Distributing stock held before the Split-off by such shareholder was acquired pursuant to a plan (or series of related transactions) described in § 355(e)(2)(A)(ii) with the Split-off).

(24) The designation and classification of the members of the Holdings board of directors will not be taken into account in applying § 355(e)(2)(A)(ii).

(25) For purposes of testing the effect of the Automatic Conversion on the Split-off under § 355(e), any increase in the percentage of the voting power of Controlled stock owned by the Distributing Group 1 Public Shareholders that results from the Automatic Conversion will be disregarded (and not treated as an acquisition for purposes of § 355(e)(2)(A)(ii)) to the extent of any decrease in the percentage of the voting power of Controlled stock owned by such holders that results from the Combination. The effect of the Automatic Conversion will only be taken into account under § 355(e) and this ruling to the extent any shift in voting power is otherwise taken into account for § 355(e) purposes.

(26) The Redemption Right, whether exercisable against Successor Shareholder or Related Persons, will not be treated as an option for purposes of § 1.355-7(e)(3).

(27) The ROFR will not be treated as an option for purposes of § 1.355-7(e)(3) (§ 1.355-7(e)(4)(iii)).

(28) For purposes of testing the effect of the Holdings Post-Merger Repurchases on the Split-off under § 355(e), (i) the Holdings Post-Merger Repurchases will be treated as being made from all holders of Holdings Class A Common Stock on a pro rata basis, and (ii) any increase in the percentage by vote or value of Controlled stock owned by the holders of Holdings Class B Common Stock (including transferees of such holders (and transferees of such transferees) that do not acquire their shares as part of a plan that includes the Split-off) that results from the Holdings Post-Merger Repurchases will be disregarded (and not treated as an acquisition for purposes of § 355(e)(2)(A)(ii)) to the extent of any decrease in the percentage by vote or value, respectively, of Controlled stock owned by such holders that results from the Combination. The effect of the Holdings Post-Merger Repurchases will only be taken into account under § 355(e) and this ruling to the extent such Holdings Post-Merger Repurchases are otherwise treated, for § 355(e) purposes, as part of a plan (or series of related transactions) with the Split-off.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Split-off satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Split-off is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Split-off is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7);
- (iv) Any payments below fair market value between Distributing and Controlled; and

- (v) Except as necessary to rule above, the federal income tax consequences of Steps ((i) - (vii), (x) - (xiii), (xv) - (xvi)), and the Combination.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representatives.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)